

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 225
SENATE BILL 1493

AN ACT

AMENDING SECTIONS 17-265, 35-142, 49-104, 49-203 AND 49-210, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.2; AMENDING SECTIONS 49-261, 49-262 AND 49-263.01, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 17-265, Arizona Revised Statutes, is amended to
3 read:

4 17-265. Game and fish in-lieu fee program restoration
5 endowment trust fund; exemption; definition

6 A. The game and fish in-lieu fee program restoration endowment
7 trust fund is established to be used to fulfill the department's
8 obligations as an in-lieu fee sponsor pursuant to sections 401 and 404 of
9 the clean water act OR PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2. The
10 commission shall administer the trust fund as trustee.

11 B. The trust fund is a permanent endowment fund that consists of
12 monies deposited from proceeds received by the department as an in-lieu
13 fee sponsor pursuant to sections 401 and 404 of the clean water act OR
14 PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2, and interest and investment
15 income earned on those monies, including:

16 1. Compensatory mitigation monies received from ~~federal~~ in-lieu fee
17 permittees through the purchase of in-lieu fee mitigation credits.

18 2. Monies received from the United States army corps of engineers
19 for other approved in-lieu fee programs.

20 3. Monies received from the United States army corps of engineers
21 as a resolution of unauthorized activities under a completed federal
22 enforcement action that does not involve department personnel pursuant to
23 sections 401 and 404 of the clean water act.

24 C. Monies in the trust fund are continuously appropriated. Monies
25 in the trust fund do not revert to the state general fund and are exempt
26 from the provisions of section 35-190 relating to lapsing of
27 appropriations.

28 D. The state treasurer shall accept, separately account for and
29 hold in trust any trust fund monies deposited pursuant to this section in
30 the state treasury, which are considered to be trust monies as defined in
31 section 35-310 and which may not be commingled with any other monies in
32 the state treasury except for investment purposes. On notice from the
33 commission, the state treasurer shall invest and divest, as provided by
34 section 35-313, 35-314 or 35-314.03, any trust fund monies deposited in
35 the state treasury, and monies earned from interest and investment income
36 shall be credited to the trust fund.

37 E. The beneficiaries of the trust are the in-lieu fee projects
38 sponsored by the department pursuant to sections 401 and 404 of the clean
39 water act OR PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2.

40 F. Monies in the trust fund shall be spent by the commission solely
41 for the following:

42 1. The purposes authorized under any enabling instrument between
43 the commission, the United States army corps of engineers and the United
44 States environmental protection agency OR PURSUANT TO AN ENABLING
45 INSTRUMENT EXECUTED UNDER TITLE 49, CHAPTER 2, ARTICLE 3.2.

1 2. Site selection, design, implementation, monitoring, management
2 and administrative costs related to the department's responsibilities as
3 an in-lieu fee sponsor pursuant to sections 401 and 404 of the clean water
4 act OR PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 3.2.

5 G. For the purposes of this section, "clean water act" has the same
6 meaning prescribed in section 49-201.

7 Sec. 2. Section 35-142, Arizona Revised Statutes, is amended to
8 read:

9 35-142. Monies kept in funds separate from state general
10 fund; receipt and withdrawal

11 A. All monies received for and belonging to the state shall be
12 deposited in the state treasury and credited to the state general fund
13 except the following, which shall be placed and retained in separate
14 funds:

15 1. The unexpendable principal of monies received from federal land
16 grants shall be placed in separate funds and the account of each such
17 separate fund shall bear a title indicating the source and the institution
18 or purpose to which the fund belongs.

19 2. The interest, rentals and other expendable money received as
20 income from federal land grants shall be placed in separate accounts, each
21 account bearing a title indicating the source and the institution or
22 purpose to which the fund belongs. Such expendable monies shall be
23 expended only as authorized, regulated and controlled by the general
24 appropriations act or other act of the legislature.

25 3. All private or quasi-private monies authorized by law to be paid
26 to or held by the state treasurer shall be placed in separate accounts,
27 each account bearing a title indicating the source and purpose of the
28 fund.

29 4. All monies legally pledged to retirement of building
30 indebtedness or bonds issued by those institutions authorized to incur
31 such indebtedness or to issue such bonds shall be placed in separate
32 accounts.

33 5. Monies of a multi-county water conservation district authorized
34 by law to be paid to or held by the state treasurer shall be placed in
35 separate accounts, each account bearing a title indicating the source and
36 purpose of the fund.

37 6. All monies collected by the Arizona game and fish department
38 shall be deposited in a special fund known as the state game and fish
39 protection fund for the use of the Arizona game and fish commission in
40 carrying out the provisions of title 17.

41 7. All federal monies that are received by the department of
42 economic security for family assistance benefits and medical eligibility
43 as a result of efficiencies developed by the department of economic
44 security and that would otherwise revert to the state general fund
45 pursuant to section 35-190 shall be retained for use by the department of

1 economic security in accordance with the terms and conditions imposed by
2 the federal funding source in an account or accounts established or
3 authorized by the state treasurer.

4 8. Monies designated by law as special state funds shall not be
5 considered a part of the general fund. Unless otherwise prescribed by
6 law, the state treasurer shall be the custodian of all such funds.

7 9. All monies received and any accounts established and maintained
8 by the director of the Arizona state retirement system or the
9 administrator of the public safety personnel retirement system, the
10 corrections officer retirement plan and the elected officials' retirement
11 plan.

12 10. Monies received by a state agency or institution as a gift,
13 devise or donation shall not be considered a part of the state general
14 fund or transferred to the state general fund unless the gift, devise or
15 donation specifically authorizes a general state use for the monies. A
16 state agency or institution that receives a monetary gift, devise or
17 donation shall account for those monies separately.

18 11. All monies received by the Arizona game and fish commission in
19 connection with clean water act in-lieu fee projects shall be deposited in
20 a special trust fund, known as the game and fish in-lieu fee program
21 restoration endowment trust fund, established by section 17-265 for the
22 use of the Arizona game and fish commission solely for the following:

23 (a) The purposes authorized under any enabling instrument between
24 the commission AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR BETWEEN THE
25 COMMISSION, the United States army corps of engineers and the United
26 States environmental protection agency.

27 (b) Site selection, design, implementation, monitoring, management
28 and administrative costs related to the ARIZONA GAME AND FISH department's
29 responsibilities as an in-lieu fee sponsor pursuant to sections 401 and
30 404 of the clean water act.

31 B. No money shall be received or held by the state treasurer except
32 as authorized by law, and in every instance the treasurer shall issue a
33 receipt for money received and shall record the transaction in the
34 statewide accounting system. No money shall be withdrawn from the
35 treasury except on the warrant or electronic funds transfer voucher of the
36 department of administration.

37 C. Monies received for and belonging to this state and resulting
38 from compromises or settlements by or against this state, excluding
39 restitution and reimbursement to state agencies for costs or attorney
40 fees, shall be credited to the state general fund unless specifically
41 credited to another fund by law. A fund consisting of monies other than
42 monies received for restitution, costs or attorney fees shall not be
43 established on the basis of a court order without prior legislative
44 authorization. For the purposes of this subsection, "restitution" means

1 monies intended to compensate a specific, identifiable person, including
2 this state, for economic loss.

3 D. All federal monies granted and paid to this state by the federal
4 government shall be accounted for in the accounts or funds of this state
5 in the necessary detail to meet federal and state accounting, budgetary
6 and auditing requirements, and all appropriations for matching such
7 federal monies shall be transferred from the state general fund to such
8 separate funds as needed, except as otherwise required by the federal
9 government.

10 E. Nothing in this section requires the establishment of separate
11 accounts or funds for such federal monies unless otherwise required by
12 federal or state law. The department of administration has the authority
13 to use the most efficient system of accounts and records, consistent with
14 legal requirements and standard and necessary fiscal safeguards.

15 F. Nothing in this section precludes the creation by the department
16 of administration of a clearing account or other acceptable accounting
17 method to effect prompt payment of claims from an approved budget or
18 appropriation. The department of administration shall report each account
19 or fund established or cancelled to the directors of the joint legislative
20 budget committee and the governor's office of strategic planning and
21 budgeting.

22 G. Nothing in this section or any other section precludes the use
23 of monies kept in funds separate from the state general fund, the interest
24 from which accrues to the state general fund, for payment of claims
25 against the state general fund, provided sufficient monies remain
26 available for payment of claims against such funds.

27 H. The department of administration may issue warrants for
28 qualified expenditures of federal program monies before they are deposited
29 in the state treasury. The receipt of federal monies shall be timed to
30 coincide, as closely as administratively feasible, with the redemption of
31 warrants by the state treasurer. The department of administration shall
32 limit expenditures to the amount that has been made available for the use
33 under the grant award by the federal government. The state agency
34 initiating the expenditures is responsible for ensuring that expenditures
35 qualify for coverage under the guidelines of the federal grant award.

36 I. The department of administration shall establish the policies
37 and procedures for all state agencies for drawing federal monies. When
38 the established method results in federal monies being held by this state,
39 the department of administration may use the interest earned on the monies
40 to pay the federal government for any related interest liability. If an
41 interest liability is incurred due to a state agency varying from the
42 established policies and procedures, the department of administration
43 shall charge the appropriate agency account or fund. Any federal interest
44 liability owed to this state as a result of the delayed federal
45 disbursements shall be used to offset this state's interest liability to

1 the federal government. Any remaining interest earnings shall be
2 deposited in the state general fund.

3 J. Any state agency or authorized agent of a state agency may
4 accept credit cards pursuant to an agreement entered into by the state
5 treasurer pursuant to section 35-315 for the payment of any amount due to
6 that agency or agent or this state.

7 K. Except for the department of revenue, agencies or authorized
8 agents on behalf of state agencies that accept credit cards shall deduct
9 any applicable discount fee and processing fee associated with the
10 transaction amount before depositing the net amount in the appropriate
11 state fund. No other reduction is permitted against the transaction
12 amount. The net amount deposited in the appropriate state fund shall be
13 considered as the full deposit required by law of monies received by the
14 agency or the authorized agent. Payment of any applicable discount fee
15 and processing fee shall be accounted for in the annual report submitted
16 to the governor's office of strategic planning and budgeting in accordance
17 with section 41-1273. The transaction amount of any credit card
18 transaction shall not be reduced by any discount fee or processing fee in
19 an amount in excess of the merchant card settlement fees reflected in the
20 state banking contract with the state treasurer's office.

21 L. Any state agency that contracts with an authorized agent for the
22 electronic processing of transactions pursuant to title 41, chapter 23 may
23 include a provision in the contract to allow the authorized agent to
24 impose a convenience fee or a service fee or surcharge. If allowed, the
25 convenience fee or the service fee or surcharge shall be charged to the
26 cardholder in addition to the transaction amount, except for the
27 following:

28 1. Except as provided in subsection R of this section, any permits,
29 licenses or other authorizations needed to pursue a trade or occupation in
30 this state.

31 2. Except as provided in subsection R of this section, any permits,
32 licenses or other authorizations needed to establish, expand or operate a
33 business in this state.

34 3. Except as provided in subsection R of this section, any permits,
35 licenses or other authorizations needed to register a vehicle or license a
36 driver in this state.

37 M. Each state agency or its authorized agent shall:

38 1. Deduct the amount of the convenience fee or the service fee or
39 surcharge before depositing the transaction amount or the transaction
40 amount reduced by the discount fee or the processing fee, or both, into
41 the appropriate state fund.

42 2. Not deduct any part of the convenience fee or the service fee or
43 surcharge from the transaction amount before depositing the net amount
44 into the appropriate state fund.

1 3. Deduct the amount of the discount fee or the processing fee, or
2 both, from the transaction amount before depositing the net amount into
3 the appropriate state fund.

4 N. The net amount deposited in the appropriate state fund pursuant
5 to subsection L or M of this section shall be considered as the full
6 deposit of monies that is required by law and that is received by the
7 agency.

8 O. Before charging a convenience fee or a service fee or surcharge,
9 a state agency shall submit the proposed convenience fee or the proposed
10 service fee or surcharge to the state treasurer for approval. If the
11 state treasurer determines that the proposed convenience fee or the
12 proposed service fee or surcharge is necessary to ensure the efficient
13 processing of payments to the state agency and is in compliance with the
14 standards of the credit card industry, the state treasurer shall approve
15 the convenience fee or the service fee or surcharge. Notwithstanding
16 section 35-142.01, convenience fees received by a state agency or its
17 authorized agent may be used to offset the costs imposed by the authorized
18 agent in processing the transactions.

19 P. When the percentage of electronic transactions first exceeds at
20 least thirty percent of a state agency's total transactions, the state
21 agency shall perform a cost benefit report, including costs of convenience
22 fees or the service fee or surcharge, the amount of revenue generated and
23 any realized cost savings.

24 Q. Nothing in this section or any other provision of law authorizes
25 any state agency, authorized agent of any state agency or budget unit to
26 establish a bank account for any government monies. All monies received
27 by or on behalf of this state shall be deposited with and in the custody
28 of the state treasurer or in an account that is authorized by the state
29 treasurer pursuant to this section. This subsection does not apply to
30 monies received and any accounts established and maintained by the
31 director of the Arizona state retirement system or the administrator of
32 the public safety personnel retirement system, the corrections officer
33 retirement plan and the elected officials' retirement plan.

34 R. If a state agency provides an alternative method of payment, the
35 convenience fee or the service fee or surcharge may be charged to the
36 cardholder in addition to the transaction amount.

37 Sec. 3. Section 49-104, Arizona Revised Statutes, is amended to
38 read:

39 49-104. Powers and duties of the department and director

40 A. The department shall:

41 1. Formulate policies, plans and programs to implement this title
42 to protect the environment.

43 2. Stimulate and encourage all local, state, regional and federal
44 governmental agencies and all private persons and enterprises that have
45 similar and related objectives and purposes, cooperate with those

1 agencies, persons and enterprises and correlate department plans, programs
2 and operations with those of the agencies, persons and enterprises.

3 3. Conduct research on its own initiative or at the request of the
4 governor, the legislature or state or local agencies pertaining to any
5 department objectives.

6 4. Provide information and advice on request of any local, state or
7 federal agencies and private persons and business enterprises on matters
8 within the scope of the department.

9 5. Consult with and make recommendations to the governor and the
10 legislature on all matters concerning department objectives.

11 6. Promote and coordinate the management of air resources to ensure
12 their protection, enhancement and balanced utilization consistent with the
13 environmental policy of this state.

14 7. Promote and coordinate the protection and enhancement of the
15 quality of water resources consistent with the environmental policy of
16 this state.

17 8. Encourage industrial, commercial, residential and community
18 development that maximizes environmental benefits and minimizes the
19 effects of less desirable environmental conditions.

20 9. Ensure the preservation and enhancement of natural beauty and
21 man-made scenic qualities.

22 10. Provide for the prevention and abatement of all water and air
23 pollution including that related to particulates, gases, dust, vapors,
24 noise, radiation, odor, nutrients and heated liquids in accordance with
25 article 3 of this chapter and chapters 2 and 3 of this title.

26 11. Promote and recommend methods for the recovery, recycling and
27 reuse or, if recycling is not possible, the disposal of solid wastes
28 consistent with sound health, scenic and environmental quality policies.
29 ~~Beginning in 2014,~~ The department shall report annually on its revenues
30 and expenditures relating to the solid and hazardous waste programs
31 overseen or administered by the department.

32 12. Prevent pollution through the regulation of the storage,
33 handling and transportation of solids, liquids and gases that may cause or
34 contribute to pollution.

35 13. Promote the restoration and reclamation of degraded or
36 despoiled areas and natural resources.

37 14. Assist the department of health services in recruiting and
38 training state, local and district health department personnel.

39 15. Participate in the state civil defense program and develop the
40 necessary organization and facilities to meet wartime or other disasters.

41 16. Cooperate with the Arizona-Mexico commission in the governor's
42 office and with researchers at universities in this state to collect data
43 and conduct projects in the United States and Mexico on issues that are
44 within the scope of the department's duties and that relate to quality of
45 life, trade and economic development in this state in a manner that will

1 help the Arizona-Mexico commission to assess and enhance the economic
2 competitiveness of this state and of the Arizona-Mexico region.

3 17. Unless specifically authorized by the legislature, ensure that
4 state laws, rules, standards, permits, variances and orders are adopted
5 and construed to be consistent with and no more stringent than the
6 corresponding federal law that addresses the same subject matter. This
7 paragraph ~~shall not be construed to~~ DOES NOT adversely affect standards
8 adopted by an Indian tribe under federal law.

9 18. Provide administrative and staff support for the oil and gas
10 conservation commission.

11 B. The department, through the director, shall:

12 1. Contract for the services of outside advisers, consultants and
13 aides reasonably necessary or desirable to enable the department to
14 adequately perform its duties.

15 2. Contract and incur obligations reasonably necessary or desirable
16 within the general scope of department activities and operations to enable
17 the department to adequately perform its duties.

18 3. Utilize any medium of communication, publication and exhibition
19 when disseminating information, advertising and publicity in any field of
20 its purposes, objectives or duties.

21 4. Adopt procedural rules that are necessary to implement the
22 authority granted under this title, but that are not inconsistent with
23 other provisions of this title.

24 5. Contract with other agencies, including laboratories, in
25 furthering any department program.

26 6. Use monies, facilities or services to provide matching
27 contributions under federal or other programs that further the objectives
28 and programs of the department.

29 7. Accept gifts, grants, matching monies or direct payments from
30 public or private agencies or private persons and enterprises for
31 department services and publications and to conduct programs that are
32 consistent with the general purposes and objectives of this chapter.
33 Monies received pursuant to this paragraph shall be deposited in the
34 department fund corresponding to the service, publication or program
35 provided.

36 8. Provide for the examination of any premises if the director has
37 reasonable cause to believe that a violation of any environmental law or
38 rule exists or is being committed on the premises. The director shall
39 give the owner or operator the opportunity for its representative to
40 accompany the director on an examination of those premises. Within
41 forty-five days after the date of the examination, the department shall
42 provide to the owner or operator a copy of any report produced as a result
43 of any examination of the premises.

1 9. Supervise sanitary engineering facilities and projects in this
2 state, authority for which is vested in the department, and own or lease
3 land on which sanitary engineering facilities are located, and operate the
4 facilities, if the director determines that owning, leasing or operating
5 is necessary for the public health, safety or welfare.

6 10. Adopt and enforce rules relating to approving design documents
7 for constructing, improving and operating sanitary engineering and other
8 facilities for disposing of solid, liquid or gaseous deleterious matter.

9 11. Define and prescribe reasonably necessary rules regarding the
10 water supply, sewage disposal and garbage collection and disposal for
11 subdivisions. The rules shall:

12 (a) Provide for minimum sanitary facilities to be installed in the
13 subdivision and may require that water systems plan for future needs and
14 be of adequate size and capacity to deliver specified minimum quantities
15 of drinking water and to treat all sewage.

16 (b) Provide that the design documents showing or describing the
17 water supply, sewage disposal and garbage collection facilities be
18 submitted with a fee to the department for review and that no lots in any
19 subdivision be offered for sale before compliance with the standards and
20 rules has been demonstrated by approval of the design documents by the
21 department.

22 12. Prescribe reasonably necessary measures to prevent pollution of
23 water used in public or semipublic swimming pools and bathing places and
24 to prevent deleterious conditions at such places. The rules shall
25 prescribe minimum standards for the design of and for sanitary conditions
26 at any public or semipublic swimming pool or bathing place and provide for
27 abatement as public nuisances of premises and facilities that do not
28 comply with the minimum standards. The rules shall be developed in
29 cooperation with the director of the department of health services and
30 shall be consistent with the rules adopted by the director of the
31 department of health services pursuant to section 36-136, subsection I,
32 paragraph 10.

33 13. Prescribe reasonable rules regarding sewage collection,
34 treatment, disposal and reclamation systems to prevent the transmission of
35 sewage borne or insect borne diseases. The rules shall:

36 (a) Prescribe minimum standards for the design of sewage collection
37 systems and treatment, disposal and reclamation systems and for operating
38 the systems.

39 (b) Provide for inspecting the premises, systems and installations
40 and for abating as a public nuisance any collection system, process,
41 treatment plant, disposal system or reclamation system that does not
42 comply with the minimum standards.

43 (c) Require that design documents for all sewage collection
44 systems, sewage collection system extensions, treatment plants, processes,
45 devices, equipment, disposal systems, on-site wastewater treatment

1 facilities and reclamation systems be submitted with a fee for review to
2 the department and may require that the design documents anticipate and
3 provide for future sewage treatment needs.

4 (d) Require that construction, reconstruction, installation or
5 initiation of any sewage collection system, sewage collection system
6 extension, treatment plant, process, device, equipment, disposal system,
7 on-site wastewater treatment facility or reclamation system conform with
8 applicable requirements.

9 14. Prescribe reasonably necessary rules regarding excreta storage,
10 handling, treatment, transportation and disposal. The rules may:

11 (a) Prescribe minimum standards for human excreta storage,
12 handling, treatment, transportation and disposal and shall provide for
13 inspection of premises, processes and vehicles and for abating as public
14 nuisances any premises, processes or vehicles that do not comply with the
15 minimum standards.

16 (b) Provide that vehicles transporting human excreta from privies,
17 septic tanks, cesspools and other treatment processes shall be licensed by
18 the department subject to compliance with the rules. The department may
19 require payment of a fee as a condition of licensure. The department may
20 establish by rule a fee as a condition of licensure, including a maximum
21 fee. As part of the rulemaking process, there must be public notice and
22 comment and a review of the rule by the joint legislative budget
23 committee. ~~After September 30, 2013,~~ The department shall not increase
24 that fee by rule without specific statutory authority for the increase.
25 The fees shall be deposited, pursuant to sections 35-146 and 35-147, in
26 the solid waste fee fund established by section 49-881.

27 15. Perform the responsibilities of implementing and maintaining a
28 data automation management system to support the reporting requirements of
29 title III of the superfund amendments and reauthorization act of 1986
30 (P.L. 99-499) and article 2 of this chapter.

31 16. Approve remediation levels pursuant to article 4 of this
32 chapter.

33 17. Establish or revise fees by rule pursuant to the authority
34 granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this
35 title for the department to adequately perform its duties. All fees shall
36 be fairly assessed and impose the least burden and cost to the parties
37 subject to the fees. In establishing or revising fees, the department
38 shall base the fees on:

39 (a) The direct and indirect costs of the department's relevant
40 duties, including employee salaries and benefits, professional and outside
41 services, equipment, in-state travel and other necessary operational
42 expenses directly related to issuing licenses as defined in title 41,
43 chapter 6 and enforcing the requirements of the applicable regulatory
44 program.

1 (b) The availability of other funds for the duties performed.

2 (c) The impact of the fees on the parties subject to the fees.

3 (d) The fees charged for similar duties performed by the
4 department, other agencies and the private sector.

5 18. Appoint a person with a background in oil and gas conservation
6 to act on behalf of the oil and gas conservation commission and administer
7 and enforce the applicable provisions of title 27, chapter 4 relating to
8 the oil and gas conservation commission.

9 C. The department may:

10 1. Charge fees to cover the costs of all permits and inspections it
11 performs to ensure compliance with rules adopted under section 49-203,
12 except that state agencies are exempt from paying ~~the~~ THOSE fees THAT ARE
13 NOT ASSOCIATED WITH THE DREDGE AND FILL PERMIT PROGRAM ESTABLISHED
14 PURSUANT TO CHAPTER 2, ARTICLE 3.2 OF THIS TITLE. FOR SERVICES PROVIDED
15 UNDER THE DREDGE AND FILL PERMIT PROGRAM, A STATE AGENCY SHALL PAY EITHER:

16 (a) THE FEES ESTABLISHED BY THE DEPARTMENT UNDER THE DREDGE AND
17 FILL PERMIT PROGRAM.

18 (b) THE REASONABLE COST OF SERVICES PROVIDED BY THE DEPARTMENT
19 PURSUANT TO AN INTERAGENCY SERVICE AGREEMENT.

20 2. Monies collected pursuant to this subsection shall be deposited,
21 pursuant to sections 35-146 and 35-147, in the water quality fee fund
22 established by section 49-210.

23 ~~2.~~ 3. Contract with private consultants for the purposes of
24 assisting the department in reviewing applications for licenses, permits
25 or other authorizations to determine whether an applicant meets the
26 criteria for issuance of the license, permit or other authorization. If
27 the department contracts with a consultant under this paragraph, an
28 applicant may request that the department expedite the application review
29 by requesting that the department use the services of the consultant and
30 by agreeing to pay the department the costs of the consultant's services.
31 Notwithstanding any other law, monies paid by applicants for expedited
32 reviews pursuant to this paragraph are appropriated to the department for
33 use in paying consultants for services.

34 D. The director may:

35 1. If the director has reasonable cause to believe that a violation
36 of any environmental law or rule exists or is being committed, inspect any
37 person or property in transit through this state and any vehicle in which
38 the person or property is being transported and detain or disinfect the
39 person, property or vehicle as reasonably necessary to protect the
40 environment if a violation exists.

41 2. Authorize in writing any qualified officer or employee in the
42 department to perform any act that the director is authorized or required
43 to do by law.

1 Sec. 4. Section 49-203, Arizona Revised Statutes, is amended to
2 read:

3 49-203. Powers and duties of the director and department

4 A. The director shall:

5 1. Adopt, by rule, water quality standards in the form and subject
6 to the considerations prescribed by article 2 of this chapter.

7 2. Adopt, by rule, a permit program that is consistent with but no
8 more stringent than the requirements of the clean water act for the point
9 source discharge of any pollutant or combination of pollutants into
10 navigable waters. The program and the rules shall be sufficient to enable
11 this state to administer the permit program identified in section 402(b)
12 of the clean water act including the sewage sludge requirements of section
13 405 of the clean water act and as prescribed by article 3.1 of this
14 chapter.

15 3. Adopt, by rule, a program to control nonpoint source discharges
16 of any pollutant or combination of pollutants into navigable waters.

17 4. Adopt, by rule, an aquifer protection permit program to control
18 discharges of any pollutant or combination of pollutants that are reaching
19 or may with a reasonable probability reach an aquifer. The permit program
20 shall be as prescribed by article 3 of this chapter.

21 5. Adopt, by rule, the permit program for underground injection
22 control described in the safe drinking water act.

23 6. Adopt, by rule, technical standards for conveyances of reclaimed
24 water and a permit program for the direct reuse of reclaimed water.

25 7. Adopt, by rule or as permit conditions, ~~such~~ discharge
26 limitations, best management practice standards, new source performance
27 standards, toxic and pretreatment standards and ~~such~~ other standards and
28 conditions as ~~are~~ reasonable and necessary to carry out the permit
29 programs and regulatory duties described in paragraphs 2 through 5 of this
30 subsection.

31 8. Assess and collect fees to revoke, issue, deny, modify or
32 suspend permits issued pursuant to this chapter and to process permit
33 applications. The director may also assess and collect costs reasonably
34 necessary if the director must conduct sampling or monitoring relating to
35 a facility because the owner or operator of the facility has refused or
36 failed to do so on order by the director. The director shall set fees
37 that are reasonably related to the department's costs of providing the
38 service for which the fee is charged. ~~State agencies are exempt from all~~
39 ~~fees imposed pursuant to this chapter.~~ Monies collected from aquifer
40 protection permit fees and from Arizona pollutant discharge elimination
41 system permit fees shall be deposited, pursuant to sections 35-146 and
42 35-147, in the water quality fee fund established by section 49-210.
43 Monies from other permit fees shall be deposited, pursuant to sections
44 35-146 and 35-147, in the water quality fee fund unless otherwise provided
45 by law. Monies paid by an applicant for review by consultants for the

1 department pursuant to section 49-241.02, subsection D, shall be
2 deposited, pursuant to sections 35-146 and 35-147, in the water quality
3 fee fund established by section 49-210. STATE AGENCIES ARE EXEMPT FROM
4 ALL FEES IMPOSED PURSUANT TO THIS CHAPTER EXCEPT FOR THOSE FEES ASSOCIATED
5 WITH THE DREDGE AND FILL PERMIT PROGRAM ESTABLISHED PURSUANT TO ARTICLE
6 3.2 OF THIS CHAPTER. FOR SERVICES PROVIDED UNDER THE DREDGE AND FILL
7 PERMIT PROGRAM, A STATE AGENCY SHALL PAY EITHER:

8 (a) THE FEES ESTABLISHED BY THE DEPARTMENT UNDER THE DREDGE AND
9 FILL PERMIT PROGRAM.

10 (b) THE REASONABLE COST OF SERVICES PROVIDED BY THE DEPARTMENT
11 PURSUANT TO AN INTERAGENCY SERVICE AGREEMENT.

12 9. Adopt, modify, repeal and enforce other rules that are
13 reasonably necessary to carry out the director's functions under this
14 chapter.

15 10. Require monitoring at an appropriate point of compliance for
16 any organic or inorganic pollutant listed under section 49-243, subsection
17 I if the director has reason to suspect the presence of the pollutant in a
18 discharge.

19 11. Adopt rules establishing what constitutes a significant
20 increase or adverse alteration in the characteristics or volume of
21 pollutants discharged for purposes of determining what constitutes a major
22 modification to an existing facility under the definition of new facility
23 pursuant to section 49-201. Before the adoption of these rules, the
24 director shall determine whether a change at a particular facility results
25 in a significant increase or adverse alteration in the characteristics or
26 volume of pollutants discharged on a ~~case by case~~ CASE-BY-CASE basis,
27 taking into account site conditions and operational factors.

28 B. The director may:

29 1. On presentation of credentials, enter into, on or through any
30 public or private property from which a discharge has occurred, is
31 occurring or may occur or on which any disposal, land application of
32 sludge or treatment regulated by this chapter has occurred, is occurring
33 or may be occurring and any public or private property where records
34 relating to a discharge or records that are otherwise required to be
35 maintained as prescribed by this chapter are kept, as ~~is~~ reasonably
36 necessary to ensure compliance with this chapter. The director or a
37 department employee may take samples, inspect and copy records required to
38 be maintained pursuant to this chapter, inspect equipment, activities,
39 facilities and monitoring equipment or methods of monitoring, take
40 photographs and take other action reasonably necessary to determine the
41 application of, or compliance with, this chapter. The owner or managing
42 agent of the property shall be afforded the opportunity to accompany the
43 director or department employee during inspections and investigations, but
44 prior notice of entry to the owner or managing agent is not required if
45 reasonable grounds exist to believe that ~~such~~ notice would frustrate the

1 enforcement of this chapter. If the director or department employee
2 obtains any samples before leaving the premises, the director or
3 department employee shall give the owner or managing agent a receipt
4 describing the samples obtained and a portion of each sample equal in
5 volume or weight to the portion retained. If an analysis is made of
6 samples, or monitoring and testing are performed, a copy of the results
7 shall be furnished promptly to the owner or managing agent.

8 2. Require any person who has discharged, is discharging or may
9 discharge into the waters of the state under article 3, ~~or~~ 3.1 OR 3.2 of
10 this chapter and any person who is subject to pretreatment standards and
11 requirements or sewage sludge use or disposal requirements under article
12 3.1 of this chapter to collect samples, to establish and maintain records,
13 including photographs, and to install, use and maintain sampling and
14 monitoring equipment to determine the absence or presence and nature of
15 the discharge or indirect discharge or sewage sludge use or disposal.

16 3. Administer state or federal grants, including grants to
17 political subdivisions of this state, for the construction and
18 installation of publicly and privately owned pollutant treatment works and
19 pollutant control devices and establish grant application priorities.

20 4. Develop, implement and administer a water quality planning
21 process, including a ranking system for applicant eligibility, wherein
22 appropriated state monies and available federal monies are awarded to
23 political subdivisions of this state to support or assist regional water
24 quality planning programs and activities.

25 5. Enter into contracts and agreements with the federal government
26 to implement federal environmental statutes and programs.

27 6. Enter into intergovernmental agreements pursuant to title 11,
28 chapter 7, article 3 if the agreement is necessary to more effectively
29 administer the powers and duties described in this chapter.

30 7. Participate in, conduct and contract for studies,
31 investigations, research and demonstrations relating to the causes,
32 minimization, prevention, correction, abatement, mitigation, elimination,
33 control and remedy of discharges and collect and disseminate information
34 relating to discharges.

35 8. File bonds or other security as required by a court in any
36 enforcement actions under article 4 of this chapter.

37 9. ADOPT BY RULE A PERMIT PROGRAM FOR THE DISCHARGE OF DREDGED OR
38 FILL MATERIAL INTO NAVIGABLE WATERS FOR PURPOSES OF IMPLEMENTING THE
39 PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344.

40 C. Subject to section 38-503 and other applicable statutes and
41 rules, the department may contract with a private consultant for the
42 purposes of assisting the department in reviewing aquifer protection
43 permit applications and on-site wastewater treatment facilities to
44 determine whether a facility meets the criteria and requirements of this
45 chapter and the rules adopted by the director. Except as provided in

1 section 49-241.02, subsection D, the department shall not use a private
2 consultant if the fee charged for that service would be greater than the
3 fee the department would charge to provide that service. The department
4 shall pay the consultant for the services rendered by the consultant from
5 fees paid by the applicant or facility to the department pursuant to
6 subsection A, paragraph 8 of this section.

7 D. The director shall integrate all of the programs authorized in
8 this section and ~~such~~ other programs affording water quality protection
9 that are administered by the department for purposes of administration and
10 enforcement and shall avoid duplication and dual permitting to the maximum
11 extent practicable.

12 Sec. 5. Section 49-210, Arizona Revised Statutes, is amended to
13 read:

14 49-210. Water quality fee fund; appropriation; exemption;
15 monies held in trust

16 A. The water quality fee fund is established consisting of monies
17 appropriated by the legislature and fees received pursuant to sections
18 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352,
19 49-353 and 49-361. The director shall administer the fund.

20 B. Monies in the fund are subject to annual legislative
21 appropriation to the department for water quality programs. Monies in the
22 fund are exempt from the provisions of section 35-190 relating to lapsing
23 of appropriations.

24 C. On notice from the director, the state treasurer shall invest
25 and divest monies in the fund as provided by section 35-313, and monies
26 earned from investment shall be credited to the fund.

27 D. Monies in the water quality fee fund shall be used for the
28 following purposes:

29 1. The issuance of aquifer protection permits pursuant to section
30 49-241.

31 2. The aquifer protection permit registration fee procedures
32 pursuant to section 49-242.

33 3. Dry well registration fee procedures pursuant to section 49-332.

34 4. Technical review fee procedures pursuant to section 49-353.

35 5. Inspection fee procedures pursuant to section 49-104,
36 subsection C.

37 6. The issuance of permits under the Arizona pollutant discharge
38 elimination system program pursuant to section 49-255.01.

39 7. Operator certification pursuant to sections 49-352 and 49-361.

40 8. IMPLEMENTATION AND ADMINISTRATION OF THE DREDGE AND FILL PERMIT
41 PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.2 OF THIS CHAPTER, INCLUDING
42 REVIEW AND ANALYSIS FOR ISSUING JURISDICTIONAL DETERMINATIONS.

43 E. Any fee, assessment or other levy that is authorized by law or
44 administrative rule and that is collected and deposited in the water
45 quality fee fund shall be held in trust. The monies in the fund may be

1 used only for the purposes prescribed by statute and shall not be
2 appropriated or transferred by the legislature to fund the general
3 operations of this state or to otherwise meet the obligations of the
4 general fund of this state. This subsection does not apply to any taxes
5 or other levies that are imposed pursuant to title 42 or 43.

6 Sec. 6. Title 49, chapter 2, Arizona Revised Statutes, is amended
7 by adding article 3.2, to read:

8 ARTICLE 3.2. DREDGE AND FILL PERMIT PROGRAM

9 49-256. Adoption and enactment of federal definitions

10 FOR THE PURPOSES OF THIS ARTICLE AND FOR ESTABLISHING PRIMACY FOR
11 THIS STATE'S DREDGE AND FILL PERMIT PROGRAM UNDER 33 UNITED STATES CODE
12 SECTION 1344, THE FOLLOWING DEFINITIONS ARE ADOPTED AND ENACTED AS
13 FOLLOWS:

14 1. "COMPENSATORY MITIGATION" MEANS THE RESTORATION
15 (RE-ESTABLISHMENT OR REHABILITATION), ESTABLISHMENT (CREATION),
16 ENHANCEMENT, AND/OR IN CERTAIN CIRCUMSTANCES PRESERVATION OF AQUATIC
17 RESOURCES FOR THE PURPOSES OF OFFSETTING UNAVOIDABLE ADVERSE IMPACTS WHICH
18 REMAIN AFTER ALL APPROPRIATE AND PRACTICABLE AVOIDANCE AND MINIMIZATION
19 HAS BEEN ACHIEVED.

20 2. "DREDGED MATERIAL" MEANS MATERIAL THAT IS EXCAVATED OR DREDGED
21 FROM NAVIGABLE WATERS.

22 3. "FILL MATERIAL" MEANS:

23 (a) EXCEPT AS SPECIFIED IN SUBDIVISION (c) OF THIS DEFINITION, THE
24 TERM FILL MATERIAL MEANS MATERIAL PLACED IN NAVIGABLE WATERS WHERE THE
25 MATERIAL HAS THE EFFECT OF:

26 (i) REPLACING ANY PORTION OF A NAVIGABLE WATER WITH DRY LAND; OR

27 (ii) CHANGING THE BOTTOM ELEVATION OF ANY PORTION OF A NAVIGABLE
28 WATER.

29 (b) EXAMPLES OF SUCH FILL MATERIAL INCLUDE, BUT ARE NOT LIMITED TO:
30 ROCK, SAND, SOIL, CLAY, PLASTICS, CONSTRUCTION DEBRIS, WOOD CHIPS,
31 OVERBURDEN FROM MINING OR OTHER EXCAVATION ACTIVITIES, AND MATERIALS USED
32 TO CREATE ANY STRUCTURE OR INFRASTRUCTURE IN THE NAVIGABLE WATERS.

33 (c) THE TERM FILL MATERIAL DOES NOT INCLUDE TRASH OR GARBAGE.

34 4. "GENERAL PERMIT" MEANS A PERMIT AUTHORIZING A CATEGORY OF
35 DISCHARGES OF DREDGED OR FILL MATERIAL UNDER THIS ARTICLE. GENERAL
36 PERMITS ARE PERMITS FOR CATEGORIES OF DISCHARGE WHICH ARE SIMILAR IN
37 NATURE, WILL CAUSE ONLY MINIMAL ADVERSE ENVIRONMENTAL EFFECTS WHEN
38 PERFORMED SEPARATELY, AND WILL HAVE ONLY MINIMAL CUMULATIVE ADVERSE EFFECT
39 ON THE ENVIRONMENT.

40 5. "IN-LIEU FEE PROGRAM" MEANS A PROGRAM INVOLVING THE RESTORATION,
41 ESTABLISHMENT, ENHANCEMENT, AND/OR PRESERVATION OF AQUATIC RESOURCES
42 THROUGH FUNDS PAID TO A GOVERNMENTAL OR NON-PROFIT NATURAL RESOURCES
43 MANAGEMENT ENTITY TO SATISFY COMPENSATORY MITIGATION REQUIREMENTS FOR
44 DREDGE AND FILL PERMITS ISSUED PURSUANT TO THIS ARTICLE. SIMILAR TO BUT
45 DISTINCT FROM A MITIGATION BANK, AN IN-LIEU FEE PROGRAM SELLS COMPENSATORY

1 MITIGATION CREDITS TO PERMITTEES WHOSE OBLIGATION TO PROVIDE COMPENSATORY
2 MITIGATION IS THEN TRANSFERRED TO THE IN-LIEU PROGRAM SPONSOR. THE
3 OPERATION AND USE OF AN IN-LIEU FEE PROGRAM ARE GOVERNED BY AN IN-LIEU FEE
4 PROGRAM INSTRUMENT.

5 6. "MITIGATION BANK" MEANS A SITE, OR SUITE OF SITES, WHERE
6 RESOURCES (E.G., WETLANDS, STREAMS, RIPARIAN AREAS) ARE RESTORED,
7 ESTABLISHED, ENHANCED, AND/OR PRESERVED FOR THE PURPOSE OF PROVIDING
8 COMPENSATORY MITIGATION FOR IMPACTS AUTHORIZED BY DREDGE AND FILL PERMITS
9 ISSUED PURSUANT TO THIS ARTICLE. IN GENERAL, A MITIGATION BANK SELLS
10 COMPENSATORY MITIGATION CREDITS TO PERMITTEES WHOSE OBLIGATION TO PROVIDE
11 COMPENSATORY MITIGATION IS THEN TRANSFERRED TO THE MITIGATION BANK
12 SPONSOR. THE OPERATION AND USE OF A MITIGATION BANK ARE GOVERNED BY A
13 MITIGATION BANKING INSTRUMENT.

14 7. "PARTY AFFECTED BY A JURISDICTIONAL DETERMINATION" MEANS A
15 PERMIT APPLICANT, LANDOWNER, A LEASE, EASEMENT OR OPTION HOLDER, OR OTHER
16 INDIVIDUAL WHO HAS AN IDENTIFIABLE AND SUBSTANTIAL LEGAL INTEREST IN THE
17 PROPERTY (OR A PERSON ACTING WITH THE APPROVAL OF ANY OF THE FOREGOING)
18 WHO HAS RECEIVED AN APPROVED JURISDICTIONAL DETERMINATION.

19 8. "PERMITTEE-RESPONSIBLE MITIGATION" MEANS AN AQUATIC RESOURCE
20 RESTORATION, ESTABLISHMENT, ENHANCEMENT, AND/OR PRESERVATION ACTIVITY
21 UNDERTAKEN BY THE PERMITTEE (OR AN AUTHORIZED AGENT OR CONTRACTOR) TO
22 PROVIDE COMPENSATORY MITIGATION FOR WHICH THE PERMITTEE RETAINS FULL
23 RESPONSIBILITY.

24 9. "PRACTICABLE" MEANS AVAILABLE AND CAPABLE OF BEING DONE AFTER
25 TAKING INTO CONSIDERATION COST, EXISTING TECHNOLOGY, AND LOGISTICS IN
26 LIGHT OF OVERALL PROJECT PURPOSES.

27 10. "WETLANDS" MEANS THOSE AREAS THAT ARE INUNDATED OR SATURATED BY
28 SURFACE OR GROUNDWATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT,
29 AND THAT UNDER NORMAL CIRCUMSTANCES DO SUPPORT, A PREVALENCE OF VEGETATION
30 TYPICALLY ADAPTED FOR LIFE IN SATURATED SOIL CONDITIONS. WETLANDS
31 GENERALLY INCLUDE SWAMPS, MARSHES, BOGS, AND SIMILAR AREAS.

32 49-256.01. Dredge and fill permit program; permits; rules;
33 prohibitions; exemptions; exceptions; notice

34 A. FOR PURPOSES OF IMPLEMENTING THE PERMIT PROGRAM ESTABLISHED BY
35 33 UNITED STATES CODE SECTION 1344, THE DIRECTOR MAY ESTABLISH BY RULE A
36 DREDGE AND FILL PERMIT PROGRAM THAT IS CONSISTENT WITH AND NO MORE
37 STRINGENT THAN THE CLEAN WATER ACT DREDGE AND FILL PROGRAM, INCLUDING A
38 PERMITTING PROCESS.

39 B. DURING ANY PERIOD IN WHICH THE STATE HAS BEEN GRANTED AUTHORITY
40 TO ADMINISTER THE PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE
41 SECTION 1344, A PERSON MAY NOT DISCHARGE DREDGED OR FILL MATERIAL UNLESS
42 THE DISCHARGE IS EXEMPT UNDER 33 UNITED STATES CODE SECTION 1344(f) OR
43 RULES ADOPTED PURSUANT TO THIS ARTICLE, EXCEPT UNDER EITHER OF THE
44 FOLLOWING CONDITIONS:

1 1. IN CONFORMANCE WITH A PERMIT THAT IS ISSUED OR AUTHORIZED UNDER
2 THIS ARTICLE.

3 2. PURSUANT TO A PERMIT THAT IS ISSUED OR AUTHORIZED BY THE UNITED
4 STATES ARMY CORPS OF ENGINEERS UNTIL A PERMIT THAT IS ISSUED OR AUTHORIZED
5 UNDER THIS ARTICLE TAKES EFFECT.

6 C. RULES ADOPTED BY THE DIRECTOR FOR THE PURPOSES OF A PERMIT
7 PROGRAM FOR DREDGE AND FILL SHALL:

8 1. PROVIDE FOR ISSUING, AUTHORIZING, DENYING, MODIFYING, SUSPENDING
9 OR REVOKING INDIVIDUAL PERMITS, GENERAL PERMITS AND EMERGENCY PERMITS FOR
10 THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO NAVIGABLE WATERS REGULATED
11 BY THIS STATE UNDER THE CLEAN WATER ACT FOR PURPOSES OF IMPLEMENTING THE
12 PERMIT PROGRAM ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344.

13 2. ESTABLISH PERMIT CONDITIONS THAT ENSURE COMPLIANCE WITH THE
14 APPLICABLE REQUIREMENTS OF SECTION 404 OF THE CLEAN WATER ACT, INCLUDING
15 THE GUIDELINES ISSUED UNDER 33 UNITED STATES CODE SECTION 1344(b)(1).

16 3. ESTABLISH MAINTENANCE, MONITORING, SAMPLING, REPORTING,
17 RECORDKEEPING AND ANY OTHER PERMITTING REQUIREMENTS AS NECESSARY TO
18 MAINTAIN PRIMARY ENFORCEMENT RESPONSIBILITY OR TO DETERMINE COMPLIANCE
19 WITH THIS ARTICLE.

20 4. ESTABLISH THE FOLLOWING IN ACCORDANCE WITH 33 UNITED STATES CODE
21 SECTION 1344:

22 (a) CIRCUMSTANCES AND ACTIVITIES THAT DO NOT REQUIRE A DREDGE OR
23 FILL PERMIT.

24 (b) ACTIVITIES THAT ARE EXEMPT FROM THE REQUIREMENTS OF THIS
25 ARTICLE FOR ANY DISCHARGE OR FILL MATERIAL THAT MAY RESULT FROM THOSE
26 ACTIVITIES, AND THE CONDITIONS UNDER WHICH THOSE ACTIVITIES ARE EXEMPT.

27 (c) CIRCUMSTANCES UNDER WHICH A DISCHARGE OF DREDGED OR FILL
28 MATERIAL SHALL NOT BE PERMITTED.

29 5. ESTABLISH PROCEDURES FOR THE DIRECTOR TO MAKE JURISDICTIONAL
30 DETERMINATIONS THAT DETERMINE WHETHER A WETLAND OR WATERBODY IS A
31 NAVIGABLE WATER SUBJECT TO REGULATORY JURISDICTION UNDER THIS ARTICLE.
32 JURISDICTIONAL DETERMINATIONS SHALL BE:

33 (a) IN WRITING AND BE IDENTIFIED AS EITHER PRELIMINARY OR APPROVED.

34 (b) DO NOT INCLUDE DETERMINATIONS THAT A PARTICULAR ACTIVITY
35 REQUIRES A PERMIT UNDER THIS ARTICLE.

36 6. ESTABLISH PUBLIC NOTICE AND COMMENT PROCEDURES AS NECESSARY TO
37 MAINTAIN PRIMACY FOR THE DREDGE AND FILL PROGRAM AND AS THE DIRECTOR DEEMS
38 APPROPRIATE TO INFORM THE PUBLIC.

39 7. PROVIDE FOR ANY OTHER PROVISIONS NECESSARY TO MAINTAIN STATE
40 PRIMARY ENFORCEMENT RESPONSIBILITY UNDER 33 UNITED STATES CODE SECTION
41 1344 AND TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

42 D. APPROVED JURISDICTIONAL DETERMINATIONS ARE APPEALABLE AGENCY
43 ACTIONS AS DEFINED BY SECTION 41-1092 AND MAY BE APPEALED BY A PARTY
44 AFFECTED BY A JURISDICTIONAL DETERMINATION. PRELIMINARY JURISDICTIONAL
45 DETERMINATIONS ARE NOT APPEALABLE AGENCY ACTIONS AND NOTWITHSTANDING

1 SECTION 41-1092.03, THE RIGHT TO APPEAL AN APPROVED JURISDICTIONAL
2 DETERMINATION DOES NOT EXTEND TO ADJACENT LANDOWNERS OR TO THIRD PARTIES
3 THAT ARE NOT PARTIES AFFECTED BY A JURISDICTIONAL DETERMINATION.

4 E. ON ASSUMING AUTHORITY TO ADMINISTER THE PERMIT PROGRAM
5 ESTABLISHED BY 33 UNITED STATES CODE SECTION 1344, THE DEPARTMENT SHALL:

6 1. ON REQUEST BY A PARTY AFFECTED BY A JURISDICTIONAL
7 DETERMINATION, RECOGNIZE AND ADOPT ANY EXISTING APPROVED JURISDICTIONAL
8 DETERMINATIONS THAT WERE ORIGINALLY ISSUED BY THE UNITED STATES ARMY CORPS
9 OF ENGINEERS IF THE FEDERAL DEFINITION OF NAVIGABLE WATERS THAT IS
10 APPLICABLE IN THIS STATE HAS NOT CHANGED SINCE THE ISSUANCE OF THE
11 APPROVED JURISDICTIONAL DETERMINATIONS.

12 2. ON REQUEST BY A PARTY AFFECTED BY A JURISDICTIONAL
13 DETERMINATION, RENEW APPROVED JURISDICTIONAL DETERMINATIONS THAT WERE
14 ORIGINALLY ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS ON THE SAME
15 TERMS AS THE ORIGINAL UNLESS:

16 (a) PHYSICAL CHANGES HAVE OCCURRED AFFECTING THE DETERMINATION THAT
17 ARE LIKELY TO ALTER THE JURISDICTIONAL STATUS.

18 (b) THE FEDERAL DEFINITION OF NAVIGABLE WATERS THAT IS APPLICABLE
19 IN THIS STATE HAS CHANGED SINCE THE ISSUANCE OF THE APPROVED
20 JURISDICTIONAL DETERMINATIONS.

21 (c) ADDITIONAL FIELD DATA SHOW THAT THE ORIGINAL DETERMINATION WAS
22 BASED ON INACCURATE DATA AND THE NEW DATA WARRANT A REVISION TO THE
23 ORIGINAL DETERMINATION.

24 F. THE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE IS EXEMPT FROM
25 SECTION 41-3102.

26 49-256.02. Compensatory mitigation

27 A. AS A PART OF THE PROGRAM ESTABLISHED PURSUANT TO SECTION
28 49-256.01, AND CONSISTENT WITH THE GUIDELINES ESTABLISHED PURSUANT TO
29 33 UNITED STATES CODE SECTION 1344(b)(1), THE DIRECTOR SHALL ESTABLISH BY
30 RULE STANDARDS AND CRITERIA FOR THE USE OF ALL TYPES OF COMPENSATORY
31 MITIGATION, INCLUDING ON-SITE AND OFF-SITE PERMITTEE-RESPONSIBLE
32 MITIGATION, MITIGATION BANKS AND IN-LIEU FEE MITIGATION TO OFFSET
33 UNAVOIDABLE IMPACTS TO NAVIGABLE WATERS AUTHORIZED BY PERMITS ISSUED UNDER
34 THIS ARTICLE.

35 B. MITIGATION BANKS AND IN-LIEU FEE PROGRAMS MAY BE USED TO
36 COMPENSATE FOR UNAVOIDABLE IMPACTS TO NAVIGABLE WATERS THAT ARE AUTHORIZED
37 BY GENERAL PERMITS AND INDIVIDUAL PERMITS, INCLUDING AFTER-THE-FACT
38 PERMITS, IN ACCORDANCE WITH RULES ESTABLISHED PURSUANT TO THIS SECTION.
39 IN ADDITION TO OTHER POTENTIAL INJUNCTIVE RELIEF OR OTHER RELIEF REQUESTED
40 UNDER SECTION 49-262, MITIGATION BANKS AND IN-LIEU FEE PROGRAMS MAY BE
41 USED TO SATISFY REQUIREMENTS ARISING FROM AN ENFORCEMENT ACTION UNDER THIS
42 ARTICLE.

1 C. RULES ESTABLISHED BY THE DIRECTOR PURSUANT TO THIS SECTION SHALL
2 IDENTIFY ALTERNATIVE COMPENSATORY MITIGATION OPTIONS FOR A PERMIT
3 APPLICANT IF AN APPROVED MITIGATION BANK OR IN-LIEU FEE PROGRAM THAT IS
4 LOCATED IN THE SAME WATERSHED AS THE PERMIT APPLICANT'S PROPOSED DISCHARGE
5 REJECTS THAT PERMIT APPLICANT'S PARTICIPATION IN THAT MITIGATION BANK OR
6 IN-LIEU FEE PROGRAM.

7 Sec. 7. Section 49-261, Arizona Revised Statutes, is amended to
8 read:

9 49-261. Compliance orders; appeal; enforcement

10 A. If the director determines that a person is in violation of a
11 rule adopted or a condition of a permit issued pursuant to section 49-203,
12 subsection A, paragraph 6, any provision of article 2, 3, ~~or~~ 3.1 OR 3.2 of
13 this chapter, a rule adopted pursuant to article 2, 3, ~~or~~ 3.1 OR 3.2 of
14 this chapter, a discharge limitation or any other condition of a permit
15 issued under article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter or is creating an
16 imminent and substantial endangerment to the public health or environment,
17 the director may issue an order requiring compliance within a reasonable
18 time period.

19 B. A compliance order shall state with reasonable specificity the
20 nature of the violation, a time for compliance if applicable and the right
21 to a hearing.

22 C. A compliance order shall be transmitted to the alleged violator
23 by certified mail, return receipt requested, or by personal service.

24 D. A compliance order becomes final and enforceable in the superior
25 court unless within thirty days after the receipt of the order the alleged
26 violator requests a hearing before an administrative law judge. If a
27 hearing is requested, the order does not become final until the
28 administrative law judge has issued a final decision on the
29 appeal. Appeals shall be conducted ~~according~~ PURSUANT to section 49-321.

30 E. At the request of the director the attorney general may commence
31 an action in superior court to enforce orders issued under this section
32 once an order becomes final.

33 Sec. 8. Section 49-262, Arizona Revised Statutes, is amended to
34 read:

35 49-262. Injunctive relief; civil penalties; recovery of
36 litigation costs

37 A. Whether or not a person has requested a hearing, the director,
38 through the attorney general, may request a temporary restraining order, a
39 preliminary injunction, a permanent injunction or any other relief
40 necessary to protect the public health if the director has reason to
41 believe either of the following:

42 1. That a person is in violation of:

43 (a) Any provision of article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter.

1 (b) A rule adopted pursuant to section 49-203, subsection A,
2 paragraph 6.

3 (c) A rule adopted pursuant to article 2, 3, ~~or~~ 3.1 OR 3.2 of this
4 chapter.

5 (d) A discharge limitation or any other condition of a permit
6 issued under article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter.

7 2. That a person is creating an actual or potential endangerment to
8 the public health or environment because of acts performed in violation of
9 this chapter.

10 B. Notwithstanding any other provision of this chapter, if the
11 director, the county attorney or the attorney general has reason to
12 believe that a person is creating an imminent and substantial endangerment
13 to the public health or environment because of acts performed in violation
14 of article 2, 3, ~~or~~ 3.1 OR 3.2 of this chapter or a rule adopted or a
15 condition of a permit issued pursuant to section 49-203, subsection A,
16 paragraph 2, 6 or 7, the county attorney or attorney general may request a
17 temporary restraining order, a preliminary injunction, a permanent
18 injunction or any other relief necessary to protect the public health.

19 C. A person who violates any provision of article 2, 3, ~~or~~ 3.1 OR
20 3.2 of this chapter or a rule, permit, discharge limitation or order
21 issued or adopted pursuant to article 2, 3, ~~or~~ 3.1 OR 3.2 OF this
22 chapter is subject to a civil penalty of not ~~to exceed~~ MORE THAN
23 twenty-five thousand dollars per day per violation. A person who
24 violates any rule adopted or a condition of a permit issued pursuant to
25 section 49-203, subsection A, paragraph 6 is subject to a civil penalty of
26 not ~~to exceed~~ MORE THAN five thousand dollars per day per violation. The
27 attorney general may, and at the request of the director shall, commence
28 an action in superior court to recover civil penalties provided by this
29 section.

30 D. The court, in issuing any final order in any civil action
31 brought under this section, may award costs of litigation, including
32 reasonable attorney and expert witness fees, to any substantially
33 prevailing party if the court determines such an award is appropriate. If
34 a temporary restraining order is sought, the court may require the filing
35 of a bond or equivalent security.

36 E. All civil penalties except litigation costs obtained under this
37 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
38 state general fund.

39 F. Except as applied to permits issued or authorized pursuant to
40 article 3.1 OR 3.2 of this chapter, it shall be an affirmative defense to
41 civil liability under this section and section 49-261 for causing or
42 contributing to a violation of a water quality standard established
43 pursuant to this chapter, or a violation of a permit condition prohibiting
44 a violation of an aquifer water quality standard or limitation at the
45 point of compliance or a surface water quality standard if the release

1 that caused or contributed to the violation came from a facility owned or
2 operated by a party that has either:

3 1. Undertaken a remedial or response action approved by the
4 director or the administrator under this title or CERCLA in response to
5 the release of a hazardous substance, pollutant or contaminant that caused
6 or contributed to the violation of article 2 of this chapter and is in
7 compliance with that remedial or response action.

8 2. Otherwise resolved its liability for the release of a hazardous
9 substance that caused or contributed to the violation of article 2 of this
10 chapter in whole or in part by the execution of a settlement agreement or
11 consent decree with the director or administrator under this article,
12 CERCLA or any other environmental law and is in compliance with that
13 settlement agreement or consent decree.

14 G. Subsection F of this section does not prevent the director from
15 taking an appropriate enforcement action to address the release of a
16 hazardous substance, pollutant or contaminant or the violation of a permit
17 condition before or as an element of an approved remedial or response
18 action, settlement agreement or consent decree.

19 H. In determining the amount of a civil penalty for a violation
20 under article 3, ~~or~~ 3.1 OR 3.2 of this chapter, the court shall consider
21 the following factors:

- 22 1. The seriousness of the violation or violations.
- 23 2. The economic benefit, if any, that results from the violation.
- 24 3. Any history of similar violations.
- 25 4. Any good faith efforts to comply with the applicable
- 26 requirements.
- 27 5. The economic impact of the penalty on the violator.
- 28 6. The extent to which the violation was caused by a third party.
- 29 7. Other matters as justice may require.

30 I. A single operational upset that leads to simultaneous violations
31 of more than one pollutant limitation in a permit issued or authorized
32 pursuant to section 49-255.01 constitutes a single violation for purposes
33 of any penalty calculation.

34 J. If a permittee holds both a permit issued or authorized pursuant
35 to article 3 of this chapter and a permit issued or authorized pursuant to
36 article 3.1 OR 3.2 of this chapter and the permittee violates a similar
37 provision in both permits simultaneously, the department shall not recover
38 penalties for violations of both permits based on the same act or
39 omission.

40 Sec. 9. Section 49-263.01, Arizona Revised Statutes, is amended to
41 read:

42 49-263.01. Arizona pollutant discharge elimination system
43 program; violation; classification

44 A. It is unlawful for any person who is subject to section
45 49-255.01, ~~or~~ 49-255.02 OR 49-256.01 to knowingly or recklessly:

1 1. Discharge without a permit or appropriate authority under
2 article 3.1 OR 3.2 of this chapter.

3 2. Fail to monitor, sample or report discharges as required by a
4 permit issued under article 3.1 OR 3.2 of this chapter.

5 3. Violate a discharge limitation or standard specified in a permit
6 issued under article 3.1 OR 3.2 of this chapter.

7 4. Alter, modify or destroy any monitoring device, sampling method,
8 analytical method or test result required in a permit issued under article
9 3.1 OR 3.2 of this chapter in order to render the device or method
10 inaccurate.

11 5. Fail to maintain, operate or repair any monitoring device
12 required in a permit issued under article 3.1 OR 3.2 of this chapter in
13 order to render the device inaccurate, or fail to install any monitoring
14 device required in a permit issued pursuant to article 3.1 OR 3.2 of this
15 chapter.

16 6. Bypass or divert waste streams from the treatment works or any
17 portion of the treatment works resulting in a discharge, except as
18 authorized by a permit issued under article 3.1 OR 3.2 of this chapter.

19 7. Violate an effective compliance order issued for violations of
20 article 3.1 OR 3.2 of this chapter.

21 B. A reckless violation of subsection A of this section is a class
22 6 felony.

23 C. A knowing violation of subsection A of this section is a class 5
24 felony.

25 D. A person who, acting with criminal negligence, does any of the
26 following is guilty of a class 1 misdemeanor:

27 1. Violates any condition of a permit issued under article 3.1 OR
28 3.2 of this chapter.

29 2. Violates any applicable standard, limitation, filing or
30 reporting requirement imposed under article 3.1 OR 3.2 of this chapter.

31 E. A person who knowingly or recklessly manifests an extreme
32 indifference for human life in performing an act that is prohibited under
33 subsection A of this section is guilty of a class 2 felony and the
34 following apply:

35 1. In determining whether a defendant who is an individual
36 knowingly or recklessly manifests an extreme indifference for human life
37 under this subsection:

38 (a) The person is responsible only for actual awareness or actual
39 belief that the person possessed.

40 (b) Knowledge possessed by a person other than the defendant but
41 not by the defendant may not be attributed to the defendant, except that
42 in proving the defendant's possession of actual knowledge, circumstantial
43 evidence may be used, including evidence that affirmative steps were taken
44 by the defendant to shield the defendant from relevant information.

1 2. It is an affirmative defense to prosecution under this
2 subsection that the conduct charged was consented to by the person
3 endangered and that the danger and conduct charged were reasonably
4 foreseeable hazards of either:

5 (a) An occupation, a business or a profession.

6 (b) Medical treatment or medical or scientific experimentation
7 conducted by professionally approved methods and the other person had been
8 made aware of the risks involved before giving consent.

9 A defense may be established pursuant to this paragraph by a preponderance
10 of the evidence.

11 F. A person who knowingly introduces into a sewer system or into a
12 treatment works any pollutant or hazardous substance that the person knew
13 could cause personal injury or property damage or, other than in
14 compliance with all applicable federal, state or local requirements or
15 permits, that causes the treatment works to violate any discharge
16 limitation or condition in a permit issued to the treatment works pursuant
17 to article 3.1 of this chapter or section 402 of the clean water act is
18 guilty of a class 5 felony.

19 G. A person who knowingly violates a pretreatment standard or
20 pretreatment requirement imposed under article 3.1 of this chapter, or any
21 other federal pretreatment standard or pretreatment requirement, or any
22 state or municipal pretreatment standard or pretreatment requirement
23 enacted to meet the state's or municipality's obligations pursuant to
24 article 3.1 of this chapter is guilty of a class 5 felony.

25 H. Each day of violation of any provision of this section
26 constitutes a separate offense.

27 I. The attorney general may enforce this section.

28 Sec. 10. Transfer of dredge and fill permit program; pending
29 applications

30 During the process of establishing and assuming state jurisdiction
31 over the dredge and fill permit program established by 33 United States
32 code section 1344, the department of environmental quality shall negotiate
33 with the United States army corps of engineers to ensure that the United
34 States army corps of engineers will continue to process as many pending
35 applications for permits and requests for jurisdictional determinations as
36 possible before the date on which this state officially assumes and the
37 United States army corps of engineers transfers jurisdiction over the
38 dredge and fill permit program pursuant to clean water act section 404(h),
39 33 United States Code sections 1251 through 1376.

40 Sec. 11. Conditional repeal; notice

41 A. Sections 17-265, 35-142, 49-104, 49-203, 49-210, 49-261, 49-262
42 and 49-263.01, Arizona Revised Statutes, as amended by this act, are
43 repealed on August 1, 2023 unless the United States environmental
44 protection agency approves the department of environmental quality's clean
45 water act section 404 dredge and fill permit program established pursuant

1 to title 49, chapter 2, article 3.2, Arizona Revised Statutes, as added by
2 this act, under the terms of the clean water act, 33 United States code
3 sections 1251 through 1376.

4 B. Title 49, chapter 2, article 3.2, Arizona Revised Statutes, as
5 added by this act, is repealed on August 1, 2023 unless the United States
6 environmental protection agency approves the department of environmental
7 quality's clean water act section 404 dredge and fill permit program
8 established pursuant to title 49, chapter 2, article 3.2, Arizona Revised
9 Statutes, as added by this act, under the terms of the clean water act, 33
10 United States code sections 1251 through 1376.

11 C. The director of environmental quality shall notify in writing
12 the director of the Arizona legislative council on or before September 1,
13 2023 either:

- 14 1. Of the date on which the condition was met.
- 15 2. That the condition was not met.

APPROVED BY THE GOVERNOR APRIL 12, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2018.